IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5262 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LODHA MANSANG HARPAL & 1 - Petitioner(s)

Versus

MAMLATDAR & 6 - Respondent(s)

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Appearance :

MR DU SHAH for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1 - 4.
UNSERVED-EXPIRED (R) for Respondent(s) : 5 - 6.
RULE UNSERVED for Respondent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State

of Gujarat dated 24.4.90 passed in Revision Application No. SRD-3/89 in dismissing the same and confirming the order passed by the Collector, Surendranagar dated 7.9.89 passed in Revision Application No. RRT 15/89 as well as the order passed by the Assistant Collector, Limdi dated 19.12.88 passed in Revision Application No. RRT 1/88/89.

2. The dispute is with regard to the Entry No.165 with respect to the land bearing Survey No.101 admeasuring 9-Acres and 13-Gunthas as well as the land bearing Survey No.102 admeasuring 18-Acres and 38-Gunthas situated at village Bamanbar. The petitioners purchased the aforesaid land in question by registered sale-deed on 4.4.64 and the names of the petitioners came to be mutated in the revenue record vide Entry No.165 dated 21.5.64 and the same was certified by the Mamlatdar & ALT, Chotila on 7.11.64. After a period of 14 years, the said Entry was taken under suo-motu revision by the Assistant Collector, Limdi and according to the Assistant Collector, Limdi at the time of making the Entry it was not verified whether the petitioner No.1 was agriculturists or not. The Assistant Collector, Limdi by its order dated 19.12.88 allowed the said

Revision Application being Revision Application No. 1/88/89 by setting aside Entry No.165 dated 21.5.64 certified on 7.11.64 on the ground that the transaction in favour of the petitioners was hit by Section 54 of the Saurastra Garkhed Ordinance and also passed order declaring the said sale in favour of the petitioners as invalid and directing the petitioners to hand over the possession to the original land owners. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Limdi dated 19.12.88 passed in Revision Application No. RRT 1/88/89, the petitioners preferred Revision Application before the Collector, Surendranagar being Revision Application No. RRT 15/88 and the Collector, Surendranagar by its order dated 7.9.89 dismissed the said Revision Application confirming the order passed by the Assistant Collector, Limdi dated 13.12.88. Being aggrieved and dissatisfied with the order passed by the Collector, Surendranagar dated 7.9.89 passed in Revision Application No. RRT 15/88, the petitioners preferred Revision Application before the Deputy Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No. SRD 3/89 and the Deputy Secretary (Appeals), Revenue Department, State of Gujarat by its judgment

and order dated 17.4.90 dismissed the said Revision Application confirming both the orders passed by both the authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 17.4.90 passed in Revision Application No. SRD 3/89, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. It is the contention on behalf of the petitioners that exercise of powers by the Assistant Collector, Limdi and/or Deputy Collector, Limdi was after unreasonable period i.e. after a period of 16 years of sale transaction and therefore, the same was not permissible. It is also further submitted on behalf of the petitioners that the Revenue Authority has no jurisdiction to consider the legality and validity of the transaction while exercising RTS jurisdiction and that too, after a period of 16 years. It is also further submitted that order passed by the Assistant Collector, Limdi in declaring the sale transaction as invalid and in breach of the provisions of Section 54 of the Saurastra Garkhed Ordinance is without

jurisdiction as in RTS proceedings even no show-cause notice was issued to show cause why the sale transaction should not be declared invalid which was not open for the Assistant Collector, Limdi to declare the sale transaction invalid and therefore, it is requested to allow the present Special Civil Application.

4. Shri M.R.Mengdey, learned AGP has tried to support the orders passed by both the authorities below. He has submitted that the sale transaction in favour of the petitioners is invalid and in breach of the provisions of Section 54 of the Saurastra Garkhed Ordinance and therefore, all the authorities below were justified in setting aside Entry No.165 as well as declaring the sale transaction in favour of the petitioners as invalid and therefore, it is requested to dismiss the present Special Civil Application.

5. It is not in dispute that the petitioners purchased the land in question by registered sale-deed dated 4.4.64 and the names of the petitioners were mutated in the revenue record vide Entry No.165 dated 21.5.65 and the same came to be certified on 7.1.64. It is also not in

dispute that the proceedings came to be initiated by the Assistant Collector, Limdi taking the said Entry under suo-motu revision after a period of 16 years. As held by the Hon'ble Supreme Court in case of ***Mohmad Kavi Mohmad Amin V/s. Fatma Ibrahim reported in 1997(6) SCC P.71*** as well as in case of ***State of Gujarat V/s. Patel Raghav Natha & Ors. reported in 10 GLR P.992*** the authorities are required to exercise the powers within reasonable period and if the proceedings are initiated after a reasonable period, the same is not permissible even in a transaction which was void or voidable. The Division Bench of this Court in case of ***Valjibhai Jagjivanbhai V/s. State of Gujarat reported in 2005(2) G.L.H. P.34*** has also taken a similar view after considering various judgments of the Hon'ble Supreme Court. Under the circumstances, exercise of powers by the Assistant Collector, Limdi in the present case is after a period of 16 years which is certainly after unreasonable period and the same is not permissible. Under the circumstances, the orders passed by the Collector, Surendranagar as well as passed by Deputy Secretary (Appeals), Revenue Department, State of Gujarat are also required to be quashed and set aside. Even otherwise, in RTS proceedings the Revenue

Authority is not justified in setting aside the Entry on the ground that the same is in breach of the provisions of other laws, more particularly, Saurastra Garkhed Ordinance and in RTS proceedings, the Assistant Collector, Limdi was not justified in declaring the sale transaction as invalid and in breach of the provisions of Section 54 of the Saurastra Garkhed Ordinance and the said order is without jurisdiction.

6. For the reasons stated above, the petition succeeds. The judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 24.4.90 passed in Revision Application No. SRD 3/89 and the order passed by the Collector, Surendranagar dated 7.9.89 passed in Revision Application No. RRT 15/88 as well as the order passed by the Assistant Collector, Limdi dated 19.12.88 passed in Revision Application No. RRT 1/88/89 are hereby quashed and set aside.

7. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.